



Agricultural Marketing Service

7 CFR Part 986

[Doc. No. AMS-SC-21-0080; SC21-986-2]

Decreased Assessment Rate for Pecans Grown in 15 States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the American Pecan Council (Council) to decrease the assessment rate established for the 2021-22 and subsequent fiscal years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be submitted to the Docket Clerk electronically by Email: MarketingOrderComment@usda.gov or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the Federal Register and can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-

3375, Fax: (863) 291-8614, or Email: Abigail.Campos@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Marketing Order No. 986, as amended (7 CFR part 986), regulating the handling of pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas. Part 986, (referred to as “the Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Council locally administers the Order and is comprised of growers and handlers of pecans operating within the production area, and one accumulator and one public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, pecan handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rates would be applicable to all assessable pecans for the 2021-22 fiscal year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides that based on the recommendation of the Council or other available data, the Secretary shall fix three base rates of assessments for inshell pecans handled during each fiscal year. This proposed rule would decrease the assessment rates from \$0.03 per pound for improved varieties and \$0.02 per pound for native and seedling

varieties and for substandard pecans, the rates that were established for the 2016-17 and subsequent fiscal years, to \$0.01 per pound for improved varieties and \$0.00 per pound for native and seedling varieties and for substandard pecans handled for the 2021-22 and subsequent fiscal years.

The Order authorizes the Council, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Council are familiar with the Council's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

For the 2016-17 and subsequent fiscal years, the Council recommended, and USDA approved, assessment rates of \$0.03 per pound for improved varieties and \$0.02 per pound for native and seedling varieties and for substandard pecans handled. The assessment rates continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Council or other information available to USDA.

The Council held a virtual meeting on September 22, 2021, and recommended 2021-22 expenditures of \$9,002,508, and a decreased assessment rate of \$0.01 per pound of improved varieties, and \$0.00 per pound for native and seedling varieties and for substandard pecans. In comparison, the previous fiscal year's budget expenditures were \$11,741,400. The assessment rate for improved varieties of \$0.01 and the assessment rate of \$0.00 for native and seedling varieties and for substandard pecans are \$0.02 lower than the rates currently in effect.

On February 12, 2021, USDA established the Pecan Promotion, Research and Information Order, a new research and promotion program. Under the new program,

research and promotion activities for pecans would be funded through the collection of assessments from U.S. growers and importers.

With the new program in effect, the Council recommended reducing expenditures for research and promotion under the Order. With these reductions, total budgeted expenditures for 2021-22 are estimated at \$9,002,508 which is \$2,738,892 less than the \$11,741,400 budgeted for 2020-21. The Council unanimously voted to decrease the assessment rates to reflect the reduction in expenditures, and to offset the assessments collected under the new program so the assessment burden on the industry does not increase.

The major expenditures for the Council for the 2021-22 year include \$2,510,000 for international relations, \$2,180,000 for marketing, and \$1,447,066 for general administration. Budgeted expenses for these items in 2020-21 were \$1,968,000, \$6,715,000, and \$1,425,000, respectively.

The Council derived the recommended assessment rates by considering anticipated expenses, expected shipments of pecans, Market Access Program (MAP) funds, and the amount of funds available in the authorized reserve. Assessable shipments for the year are an estimated 315 million pounds of improved varieties, which should provide approximately \$3,150,000 in assessment income (315,000,000 pounds multiplied by \$0.01). Income derived from handler assessments calculated at the proposed rate, along with interest income, MAP funds, and funds from the Council's authorized reserve, would be adequate to cover projected budgeted expenses of \$9,002,508. Funds in the reserve are estimated to be \$2,800,000 at the end of the 2021-22 fiscal year, which would be within the maximum permitted by §986.64 of the Order (approximately three fiscal years' expenses).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Council or other available information.

Although these assessment rates would be in effect for an indefinite period, the Council will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Council meetings are available from the Council or USDA. Council meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Council recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking would be undertaken as necessary. The Council's 2021-22 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 4,500 growers of pecans in the production area and approximately 150 handlers subject to regulation under the Order. Small agricultural growers are defined by the Small Business Administration (SBA) as those having annual

receipts less than \$1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the 2020-21 crop value was \$435.28 million. With a crop size of 305.36 million pounds, the season average grower price was \$1.43. Dividing the \$435.28 million crop value by the estimated number of pecan growers (4,500) yields an annual average receipts per grower estimate of \$96,729. This is well below the SBA threshold for small growers.

Evidence presented at the pecan marketing order promulgation hearing indicates an average handler margin of \$0.58 per pound. Adding this margin to the average grower price of \$1.43 for in-shell pecans yields an estimated annual handler price of \$2.01 per pound. With a total 2020-21 utilization of 305.36 million pounds, the total estimated value of production at the handler level for the fiscal year was \$613.77 million (\$2.01 per pound multiplied by 305.36 million pounds). Dividing this \$613.77 million figure by the number of handlers (150) yields an average annual receipts per handler estimate of \$4.09 million. This is well below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of pecan growers and handlers may be classified as small entities.

This proposal would decrease the assessment rates collected from handlers for the 2021-22 and subsequent fiscal years from \$0.03 to \$0.01 per pound of improved varieties and from \$0.02 to \$0.00 per pound of native and seedling varieties and for substandard pecans handled. The Council recommended 2021-22 fiscal year expenditures of \$9,002,508 and proposed assessment rates of \$0.01 per pound for improved varieties and \$0.00 per pound for native and seedling varieties and for substandard pecans. The proposed assessment rates are \$0.02 per pound for improved varieties and \$0.01 per pound for native and seedling varieties lower than 2016-17 rates. The quantity of assessable pecans for the 2021-22 fiscal year is estimated at 315 million pounds. Thus,

the \$0.01 per pound for improved varieties and \$0.00 per pound for native and seedling varieties and for substandard pecans rate should provide \$3,150,000 in assessment income. Income derived from handler assessments, along with interest income, MAP funds, and funds from the Council's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures projected by the Council for the 2021-22 year include \$2,510,000 for international relations, \$2,180,000 for marketing, and \$1,447,066 for general administration. Budgeted expenses for these items in 2020-21 were \$2,510,000, \$6,285,000, and \$1,447,066, respectively.

The Council recommended decreasing the assessment rates to reflect a reduction in research and promotion expenditures as these activities would be carried out by the new USDA research and promotion program also funded by the industry. Consequently, the Council recommended a corresponding decrease in the assessment rates to reflect the decrease in research and promotion expenditures.

Prior to arriving at the estimated expenditures and assessment rates, the Council considered information from various sources, such as the Council's Governance Committee. Alternative expenditure levels were discussed by this Committee, based upon the relative value of various activities to the pecan industry, and the impact of the new research and promotion program. The Council determined that based on the information currently available, program activities would be appropriately funded, and no alternate expenditure levels were deemed appropriate.

Using NASS data, a weighted average grower price for the past 3 seasons (2018-19 through 2020-21) is \$1.66 per pound. This provides a reasonable forecast of the average grower price for 2021-22 season. The proposed assessment rate of \$0.01 per pound for improved varieties represents 0.6 percent of the \$1.66 weighted average price (six tenths of one percent; $\$0.01 \div \1.66×100).

This action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, decreasing the assessment rates reduces the burden on handlers and may also reduce the burden on growers.

The September 22, 2021 Council meeting was widely publicized throughout the pecan industry. Meetings are held virtually or in a hybrid style. Participants have a choice whether to attend in person or virtually and can participate in the Council's deliberations on all issues. Interested persons are invited to submit comments on this proposed rule, including the regulatory and informational collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581-0291 Federal Marketing Order for Pecans. No changes in those requirements would be necessary because of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large pecan handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules->

regulations/moa/small-businesses. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Council and other available information, USDA has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 986

Marketing agreements, Pecans, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Agricultural Marketing Service proposes to amend 7 CFR part 986 as follows:

PART 986 – PECANS GROWN IN THE STATES OF ALABAMA, ARKANSAS, ARIZONA, CALIFORNIA, FLORIDA, GEORGIA, KANSAS, LOUISIANA, MISSOURI, MISSISSIPPI, NORTH CAROLINA, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, AND TEXAS

1. The authority citation for 7 CFR part 986 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 986.161 is revised to read as follows:

§ 986.161 Assessment rates.

On and after October 1, 2021, assessment rates of \$0.01 per pound for pecans classified as improved, \$0.00 per pound for pecans classified as native and seedling, and \$0.00 per pound for pecans classified as substandard pecans are established.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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